IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6160 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHEIKH NISAR USMAN @ NISAR DADHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6160 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR SP SEN ASSTT GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2001

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate appearing on behalf of the petitioner and Mr.S.P.Sen, learned AGP appearing on behalf of the respondents-State.

#. In the present petition, the order of detention dated 16th February, 1998 passed by the Police Commissioner, Surat City under the provisions of Section 3[1] of the PASA Act is under challenge. The grounds of detention are communicated and supplied to the petitioner under Section 9[1] of the PASA Act. The order of detention has been actually executed on the petitioner detenu on 18th March, 2001. The petitioner has been considered as dangerous person under Section 2[C] of the PASA Act. That three statements of the secret witnesses were recorded on 20th January, 1998 and the same are verified on 13th February, 1998 and 16th February, 1998 and thereafter, on the same day, the order of detention has been passed.

#. Learned advocate Mr.Prajapati has challenged the order of detention on various grounds but according to him, one contention is enough covered by the decision of this Court, is sufficient to vitiate the order of detention. Therefore, he submitted that the statements of the secret witnesses were recorded on 20th January, 1998, which were verified by the detaining authority on 13th February, 1998 and 16th February, 1998 and therefore, immediately on the very day, the order of detention has been passed without verifying the genuineness of the facts disclosed by the secret witnesses. Therefore, the view taken by this Court in a decision reported in 2000 [3] GLR 2696, such powers exercised by the detaining authority without verifying the genuineness of the factual aspect disclosed by the secret witnesses and the order of detention is required to be satisfied as subjective satisfaction of the detaining authority is not established.

#. Learned AGP Mr.S.P.Sen appearing on behalf of the respondent - State has submitted that though no reply has been filed by the respondent authority but he submitted that looking to the grounds of the detention and the statements of the secret witnesses, the detaining authority had no other option except to pass the detention order, otherwise, the activities carried out by the petitioner would have disturbed the public order. Therefore, he submitted that the order of detention is legal and valid and no interference is required by this Court.

#. I have considered the submissions of the learned advocates for the parties. The submission of the learned advocate Mr.Prajapati is that the statements of the secret witnesses have been verified by the detaining

authority on 16th February, 1998 and on the very same day, the order of detention has been passed. Considering this aspect, the detaining authority has no time to verify the genuineness of the factual aspect which has been disclosed by the secret witnesses and the order of detention has been passed horridly and without arriving at subjective satisfaction of the detaining authority. It is necessary for the detaining authority while passing the detention order to consider the background of the detenu, past history of the detenu and genuineness of the factual aspect which ought to have been inquired by the detaining authority, otherwise, subjective satisfaction cannot be considered to have established. Therefore, in the present case, the detaining authority has verified the statements on 16th February, 1998 while calling the secret witnesses before him but the detaining authority had no time to verify the factual aspect which has been disclosed by before detaining authority and therefore, considering the view taken by this Court in reported case 2000 [3] GLR 2696, in my opinion, the order of detention is required to be quashed and set aside.

#. In the result, the present petition is allowed. The order of detention dated 16th February, 1998 which has been actually executed on the detenu on 18th March, 2001 passed by the Police Commissioner, Surat City is hereby quashed and set aside. The present petitioner - detenu Shri Sheikh Nisar Usman @ Nisar Dadhi who has been detained at Central Jail Vadodara is ordered to be released immediately if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 6-10-2001 [H.K.Rathod, J.]

#kailash#